convicted on the uncorroborated evidence of the accomplice based on impressive demeanour, later events, that is, the police report and the abortive trap showed that there is a logical consistency with the complainant's evidence in court. He relied on a passage in the judgment:

"There is a logical sequence, and an inherent consistency and truth about this narrative of PW1 which taken with all the surrounding circumstances makes it an exceptional case where the rule regarding corroboration of the evidence of an accomplice can be very safely departed from."

If I understand the passage correctly, it is said that the later events are conduct which had a direct bearing and connexion with the alleged agreement and such conduct is consistent with the complainant's testimony in court that he is telling the truth regarding the said agreement. If that is what the learned president meant, then I say he is clearly in error. In my opinion only the police report can be claimed to be of any evidential value so far as it relates to consistency of conduct and assertions of the complainant in court. That principle is well known in cases of rape and some other sexual offences. The said complaint can only be used as evidence of the consistency of his conduct with the story told by him in court. In other words, it can only be used as evidence of credibility of his testimony to the alleged agreement but there are limits to its admission. It must be made voluntarily and at the earliest convenient moment. It must not be made after a long lapse of 13 days as to allow fabrication.

The abortive trap is not admissible as evidence of the alleged agreement which must be proved independently. It is whether that piece of evidence taken with all other proved circumstances are strong enough to bring home the offence to the appellant beyond reasonable doubt. If those circumstances or some of them can be explained by any other hypothesis, then the appellant must have the benefit of that hypothesis.

The abortive trap is a telling factor in favour of the appellant. The 15 day-period of payment was not kept. If the alleged agreement were true then in my view the appellant or the intermediary would have confronted the complainant with payment. Further, where there are only two persons who could testify as to the alleged agreement and one of them turned hostile, that would seem to be a good reason to doubt the propriety of departing from the rule that it is wholly not safe to convict on the uncorroborated evidence of an accomplice based on demeanour alone.

In such circumstances what right have we to say that the defence story is unreasonable? If it stands together, if it is not consistent with the proved facts, a rejection of it would be simply and solely on the ground that it was told by an accused person under trial.

I have considered the case in its proper perspective. I allow the appeal and set aside the conviction and sentence. I have further directed my mind regarding a new trial and I say that this is not a fitting case so to do.

Appeal allowed.

Solicitors: *Joseph & Son.*

GOVINDARAJOO v. REGISTRAR OF CRIMINALS

[O.C.J. (Hashim Yeop A. Sani J.) January 14, 1974]
[Kuala Lumpur — Originating Motion No. 61 of 1973]

Registration of Criminals Ordinance, 1948 — Whether particulars of person found guilty under Juvenile Courts Act 1947, are registrable under the Ordinance — Interpretation — Ordinance replaced by new Registration of Criminals and Undesirable Persons Act, 1969 — Whether provisions of new Act can be looked at in interpreting the old Ordinance.

In this case the applicant applied for an order of *mandamus* to direct the Registrar of Criminals to deliver to him his finger-prints, photographs and negatives thereof taken when he was charged in the Juvenile Court, Kuala Lumpur.

Held: as the applicant could not be convicted in the Juvenile Court, the particulars of the applicant were not registrable under the Registration of Criminals Ordinance, 1948, and therefore the particulars should be returned to the applicant.

[Editorial Note: An appeal to the Federal Court was lodged by the respondent, *vide* Federal Court Civil Appeal No. 22 of 1974. The respondent has since withdrawn the appeal.]

Cases referred to:-

(1) *Kharudin* v. *Public Prosecutor* [1969] 1 M.L.J. 45.
(2) *Shannon Realties* v. *Ville de St. Michael* [1924] A.C. 185 at p. 192.

ORIGINATING MOTION.

M. Mahalingam for the applicant.

Gunn Chit Tuan (Senior Federal Counsel) for the respondent.

Hashim Yeop A. Sani J.: This is a motion by one Thangavelu s/o Ponnusamy on behalf of one Govindarajoo s/o Thangavelu, an infant, asking firstly, for an order of prohibition directed to the respondent (the Registrar of Criminals) to prohibit the latter from producing at the Magistrate's Court, Kuala Lumpur the registered particulars to the finding of guilt of Govindarajoo s/o Thangavelu at the hearing of the Magistrate's Court Summons Case No. B 181 of 1972, then pending, and secondly, for an order of mandamus directing the same respondent to deliver forthwith to the applicant his fingerprint form photographs and the negatives thereof taken from Govindarajoo s/o Thangavelu at the time when he was charged for an offence under the Penal Code at the Kuala Lumpur Juvenile Court vide Case No. J 96 of 1969.

The background to this application is as follows: The said Govindarajoo s/o Thangavelu was charged for an offence under section 379 of the Penal Code at the Kuala Lumpur Juvenile Court and on 26th April, 1969 was found guilty by the Juvenile Court and was bound over in the sum of $100 for one year under section 12(1)(d) of the Juvenile Courts Act, 1947. The said Thangavelu s/o Ponnusamy, as father, executed the bond to exercise proper care and guardianship. At the hearing of the Summons Case No. B 181 of 1972, relating to a charge under section 16(1)(a), Part III of the Second Schedule to the Federal Constitution, a certificate from the Registrar of Criminals containing the "conviction" and "sentence" as to the said Govindarajoo s/o Thangavelu in the Juvenile Court case, referred to earlier, was produced as evidence by the prosecution. It was on that day that the applicant knew for the first time that such particulars have been kept by the respondent. The applicant, through his solicitors, requested for the return of the fingerprints,

photographs and negatives from the respondent, but was refused on the ground that the particulars relating to the finding of guilt made by the Juvenile Court are registrable particulars and therefore cannot be returned.

At the commencement of the hearing of the motion, counsel for the applicant withdrew the application for an order of prohibition, but proceeded with the application for an order of mandamus. Counsel for the applicant cited *Kharudin* v. *Public Prosecutor*[1] and argued that section 4 of the Registration of Criminals Ordinance, 1948 does not apply to a finding of guilt by a Juvenile Court. The contention of counsel for the respondent was simply that the word "convicted" in that Ordinance includes a finding of guilt, presumably basing his argument on a construction of section 12(3) of the Juvenile Courts Act, 1947 and that the particulars were not returnable unless the subject was acquitted of the charge.

Let us look at the law applicable first. Govindarajoo s/o Thangavelu was found guilty by the Juvenile Court on the 26th April, 1969. The new Registration of Criminals and Undesirable Persons Act, 1969 (hereinafter referred to as the "new Act") came into force on 2nd May, 1969. Therefore, the law governing the registrability or otherwise of the particulars pertaining to Govindarajoo is the old Registration of Criminals Ordinance, 1948 (hereinafter referred to as the "old Ordinance"), which was still in force on 26th April, 1969. The sole question to be decided, therefore, is whether particulars relating to a finding of guilt are registrable particulars within the meaning of the old Ordinance.

Section 4 of the old Ordinance sets out what the Register shall consist of. Throughout the old Ordinance, the test applied for registrability is a conviction recorded. The only other categories of persons whose particulars can be recorded are those ordered to be banished or expelled — see section 11. The new Act is an Act to "consolidate and amend" the law relating to registration of certain persons. To determine the true scope of the old Ordinance, it would be permissible, in my view, to look at the provisions of the new Act to see what the legislature has done. Since the two statutes are *in pari materia*, it would be useful to see if there is a change or a difference of language used in the latter statute to invoke the generally fair presumption that the difference is intentional. After all, the legislature must be presumed to know the state of law before the consolidation and amendment.

One of the features of the Act which seems to stand out is the introduction of a new definition of "registrable offence" and the widening of the definition of "registrable particulars" — section 2 of the new Act. Thus, under the scheme of the new Act theft is by virtue of section 2 and the First Schedule a registrable offence and particulars relating to the offence of theft becomes registrable particulars. The approach of the new Act is therefore two-pronged, *i.e.* particulars become registrable particulars either because they come under the definition of "registrable particulars" or because they are particulars relating to a "registrable offence". Section 9 of the new Act allows registration of particulars pertaining to a person who is found guilty of a registrable offence "without conviction being recorded", but shall on application deliver the particulars on the expiry of the period of bond unless the accused is found guilty again of committing a registrable offence during such period — section 9(1)(b).

In the old Ordinance, unlike the new Act, the legislation speaks of "person convicted of a crime" and "person convicted of an offence" in clear terms. It can be seen clearly therefore that the new Act has abandoned the test of conviction, and the legislature has deliberately attempted to cover, subject to certain conditions, particulars not registrable before.

The clear and express terms "person convicted of any crime" and "person convicted of any offence" in the old Ordinance deserve attention. These words speak for themselves and there can be no other valid alternative construction to these terms. In *Shannon Realties* v. *Ville de St. Michael*,[2] the Privy Council said:

> "Where the words of a statute are clear they must, of course, be followed; but, in their Lordships' opinion, where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system."

Relevant also in the determination of the question in this case is the construction of section 12(3) of the Juvenile Courts Act, 1947. That sub-section contains two limbs in the form of directions. The first limb directs that the words "conviction" and "sentence" shall not be used in relation to children and young persons dealt with by the Juvenile Court; the second limb directs that any reference in any written law to a person convicted, a conviction and a sentence shall, in the case of a child or young person, be construed as a finding of guilt or an order made upon finding of guilt, as the case may be. The purpose of the Juvenile Courts Act, 1947 was to establish juvenile courts and certain institutions for young offenders and to make provisions for the "care and protection of children and young persons". The primary object of the Juvenile Courts Act, 1947 is therefore to enable young offenders to be dealt with under that law so that they are not treated in the same manner as an ordinary criminal. The second limb of sub-section 12(3) of the Juvenile Courts Act, 1947 should therefore be construed in the light of these objectives of the legislation. The second limb of that sub-section is therefore only an amplification of the first limb and cannot be read so as to treat or convert a finding of guilt by the Juvenile Court as a conviction for the purpose of the Registration of Criminals Ordinance, 1948. To construe the second limb of that sub-section in the manner proposed by counsel for the respondent would render the entire sub-section 12(3) meaningless and would defeat the very objectives of that Act. In this respect, I associate myself with the view held in *Kharudin* v. *Public Prosecutor*.

On the above grounds, the particulars of Govindarajoo s/o Thangavelu are not registrable under the Registration of Criminals Ordinance, 1948, and I therefore ordered that those particulars shall, if they have not been destroyed, be returned to the applicant.

No order as to costs was made.

Order accordingly.

Solicitors: *Mahalingam & Co.*